

STATE PUBLIC DEFENDER[493]

Notice of Intended Action

**Proposing rule making related to five-year rules review
and providing an opportunity for public comment**

The State Public Defender hereby proposes to amend Chapter 1, “Administration,” Chapter 2, “Petitions for Rule Making,” Chapter 3, “Declaratory Orders,” Chapter 4, “Public Records and Fair Information Practices,” Chapter 5, “Agency Procedure for Rule Making,” Chapter 10, “Eligibility Guidelines for Court-Appointed Counsel,” Chapter 11, “Attorney Fee Contracts,” Chapter 12, “Claim for Indigent Defense Services,” and Chapter 13, “Claims for Other Professional Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 13B.4(8).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 13B and 815.

Purpose and Summary

All of the State Public Defender’s rules were reviewed pursuant to the comprehensive five-year review required by Iowa Code section 17A.7. These proposed amendments eliminate several outdated and obsolete references and update others. The proposed amendments clarify and correct minor inconsistencies and otherwise make minor technical corrections to the rules.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the State Public Defender for a waiver of the discretionary provisions, if any, pursuant to 493—Chapter 6.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the State Public Defender no later than 4:30 p.m. on December 6, 2022. Comments should be directed to:

Kurt Swaim
Office of State Public Defender
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: kswaim@spd.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **1.3(2)“c”** as follows:

c. Juvenile matters, including delinquency, termination of parental rights, child in need of assistance (CINA), judicial bypass proceedings, filing by an indigent party of an adoption petition under Iowa Code section 600.3 to adopt a child who was the subject of a termination of parental rights proceeding under Iowa Code chapter 232, and juvenile commitments;

ITEM 2. Amend paragraph **1.3(3)“e”** as follows:

e. Coordinating the provision of legal representation of all indigents under arrest or charged with a crime, on appeal in criminal cases, in a proceeding to obtain postconviction relief when ordered to do so by the court, against whom a contempt action is pending, in proceedings under Iowa Code chapter 229A, in juvenile cases under Iowa Code chapters 232 and 600A, ~~or~~ in probation or parole violations under Iowa Code chapter 908, in the filing by an indigent party of an adoption petition under Iowa Code section 600.3 to adopt a child who was the subject of a termination of parental rights proceeding under Iowa Code chapter 232, or in any other matters authorized by law;

ITEM 3. Amend subrule 1.3(5) as follows:

1.3(5) Local public defender division. The local public defender division provides legal representation at the trial level to qualified persons charged with adult crimes or in juvenile matters in counties where local public defender services are provided. The division also provides representation to qualified persons in juvenile appeals and in civil commitment proceedings under Iowa Code chapter 229A at the trial and appellate levels and in any other matters authorized by law.

The local public defender division consists of independent local offices and branch offices. Each independent local office is under the direct supervision of a local public defender. A local public defender may supervise a branch office. If so, the branch office may be considered part of the local office.

ITEM 4. Amend **493—Chapter 2**, preamble, as follows:

CHAPTER 2 PETITIONS FOR RULE MAKING

The state public defender adopts the petitions for rule making segments of the Uniform Administrative Rules which are ~~printed in the first volume of the Iowa Administrative Code published on the general assembly’s website at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf~~ with the following amendments:

ITEM 5. Amend rule 493—2.3(17A) as follows:

493—2.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the State Public Defender, Lucas State Office Building, Des Moines, Iowa 50319-0087; telephone (515)242-6158; E-mail ~~spd@spd.state.ia.us~~ email spdadminoffice@spd.state.ia.us.

ITEM 6. Amend **493—Chapter 3**, preamble, as follows:

CHAPTER 3
DECLARATORY ORDERS

The state public defender adopts the declaratory orders segment of the Uniform Rules on Agency Procedure ~~printed in the first volume of the Iowa Administrative Code~~ which are published on the general assembly's website at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf with the following amendments.

ITEM 7. Amend **493—Chapter 3**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 17A ~~as amended by 1998 Iowa Acts, chapter 1202, section 13.~~

ITEM 8. Amend **493—Chapter 4**, preamble, as follows:

CHAPTER 4
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The state public defender adopts the fair information practices segments of the Uniform Administrative Rules which are ~~printed in the first volume of the Iowa Administrative Code~~ published on the general assembly's website at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf with the following amendments:

ITEM 9. Amend **493—Chapter 5**, preamble, as follows:

CHAPTER 5
AGENCY PROCEDURE FOR RULE MAKING

The state public defender adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure ~~printed in the first volume of the Iowa Administrative Code~~ published on the general assembly's website at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf with the following amendments.

ITEM 10. Amend **493—Chapter 5**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 17A ~~as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 25B.6.~~

ITEM 11. Amend rule 493—10.1(815) as follows:

493—10.1(815) Eligibility. The eligibility of any person for legal assistance by an appointed attorney shall be determined in accordance with Iowa Code section 815.9 and with the guidelines set forth in these rules. Any person who is eligible for appointed counsel shall be required by the court to repay all or a part of the cost of the applicant's legal assistance to the extent provided by law.

ITEM 12. Amend rule 493—11.3(13B), introductory paragraph, as follows:

493—11.3(13B) Attorney minimum qualifications. To be eligible to contract with the state public defender for a type of case ~~after January 1, 2015~~, the attorney must meet the minimum qualification requirements established by this rule for the particular type of case. Prior to contracting with the state

public defender, an attorney shall certify the attorney's compliance with these requirements and, prior to renewal of the contract, shall certify compliance with any ongoing requirements. Satisfying these minimum requirements does not guarantee an attorney a contract with the state public defender. The state public defender retains the discretion to deny or terminate contracts if the state public defender determines that such action is in the best interests of the state.

ITEM 13. Amend subparagraph **12.7(1)“b”(5)** as follows:

(5) If the expenses are for a certified shorthand reporter, any additional documentation required in ~~493—paragraph 13.2(4)“b”~~ 493—paragraph 13.2(3)“b” when applicable to the services provided.

ITEM 14. Rescind subrule **13.2(2)**.

ITEM 15. Renumber subrules **13.2(3)** to **13.2(8)** as **13.2(2)** to **13.2(7)**.

ITEM 16. Amend renumbered subparagraph **13.2(3)“b”(3)** as follows:

(3) If expedited transcript rates are claimed under subparagraph ~~13.2(4)“d”(10)~~ 13.2(3)“d”(10), an email or other written statement from the attorney explaining that expedited delivery is required.

ITEM 17. Amend renumbered subparagraph **13.2(3)“b”(4)** as follows:

(4) If a cancellation fee is claimed under subparagraph ~~13.2(4)“d”(6)~~ 13.2(3)“d”(6), documentation of the date and time that notice of cancellation was given.

ITEM 18. Amend renumbered subparagraph **13.2(3)“d”(6)** as follows:

(6) Cancellation fees. No cancellation fees will be paid as long as the certified shorthand reporter is given notice of cancellation at least 24 hours before the time scheduled for a deposition. Weekends and state holidays shall not be included when calculating the 24-hour prior notice of cancellation contained in this subparagraph. If the deposition is canceled with less than 24 hours' notice, a fee for two hours or the actual time that the certified shorthand reporter is present at the site of the deposition including setup and takedown of equipment, whichever is greater, is payable at the rate set forth in subparagraph ~~13.2(4)“d”(1)~~ 13.2(3)“d”(1). A certified shorthand reporter is deemed to have been given notice of cancellation when an attorney or representative of the attorney delivers notice of a cancellation to the email address provided by the certified shorthand reporter or leaves a message on voicemail or with a representative of the certified shorthand reporter at the telephone number provided by the certified shorthand reporter, not when the certified shorthand reporter actually hears or reads the message. No cancellation fee will be paid related to the transcription of an audio or video recording.

ITEM 19. Amend **493—Chapter 13**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 13B and 815 ~~as amended by 2004 Iowa Acts, House File 2138.~~